SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

APPENDIX B

ACCOMPANYING THE MOTION THAT THE REVIEW OF

THE PETITION FOR WRIT OF CERTIORARI BE DELAYED

DONALD F. KNOX
Petitioner

vs.

THE STATE OF OHIO
Respondent

Donald F. Knox
127 W. Northwood Ave.
Columbus, Ohio

Petitioner

IN THE COURT OF APPEALS, FRANKLIN COUNTY, OHIO

In the Matter of the Appeal of Donald F. Knox from a Decision of the State Personnel Board of Review : Case No. 8298

INSTANCES OF DENIAL OF FEDERAL CONSTITUTIONAL RIGHTS PRESENTED IN SUPPORT OF THE MOTION THAT THE DECISIONS OF THE LOWER COURTS BE REVIEWED

Donald F. Knox
127 W. Northwood Ave.
Columbus, Ohio

Appellant

William B. Saxbe
Attorney General
State of Ohio

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Columbus, Ohio

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STATEMENT OF THE FACTS

The appellant was terminated from his job at the University Hospital of Ohio State University on May 14, 1964 and appealed to the State Personnel Board of Review on October 9, 1964. The hearing on December 1, 1964 dealt almost exclusively with the question of whether or not the appellant had been improperly left in the unclassified service. Both sides agreed that if he had been improperly left in the unclassified service based upon Section 143.08 (A) (7), Revised Code, then he should be returned to his job with full benefits since the appointing authority had not complied with Section 143.27, Revised Code, in making the termination.

The appellee brought a motion to dismiss the appeal on March 18, 1965 on the basis that the appellant exercised an unreasonable delay in bringing his appeal to the Board, and the Board sustained said motion on April 9, 1965. An appeal was then taken to the Franklin County Common Pleas Court, and it was dismissed on October 28, 1965 for the reason that the appellant allegedly had been either a deputy or an assistant to a principal executive officer according to Section 143.08 (A) (9), Revised Code. An appeal was then made to the Franklin County Court of Appeals, and that was dismissed on May 3, 1966 on the ground that the appellant, having been an unclassified employee, had no right to bring before the Board at the outset of the case the question as to whether he had been improperly left in the unclassified service. That opinion was based upon Section 143.012, Revised Code.

The motion to certify to the Supreme Court of Ohio was overruled on December 14, 1966. A motion for rehearing was then filed on the basis of the decision on December 13, 1966 by the Franklin County Court of Appeals in the Matter of the Appeal of John L. Crabtree

et al. from a Decision of the State Personnel Board of Review (Numbers 8430-35). The appellant contended that the latter opinion was contrary to the opinion of the same court in his own case; as a result, the motion for rehearing was based upon a denial of equal protection of the law. (For further facts on Crabtree case, see footnote 1 in the "Motion that the Decisions of the Lower Courts be Reviewed...") The motion for rehearing was overruled on January 11, 1967.

A petition for writ of certiorari in this case is now awaiting action in the Supreme Court of the United States; the case is entitled Knox v. Ohio, October Term, 1967. No. 283.

The above record provides no information concerning events that took place from the time of the appeal to the Board on December 1, 1964 until the appellee's motion to the Board to dismiss the appeal as of March 18, 1965. Those events are described in the "Affidavit..." and discussed under this cover.

The official record in the case is on file with the Supreme Court of the United States; a copy is available.

A SUMMARY OF THE FAILURE TO PRESENT TO THE SUPREME COURT OF OHIO THE INSTANCES OF DENIAL OF FEDERAL CONSTITUTIONAL RIGHTS

The instances of denial of federal constitutional rights at all stages of the case are presented in the succeeding sections. None of those instances were presented to the Supreme Court of Ohio in the motion to certify or at the hearing on the motion.

Attorney John A. Brown represented the appellant in the appeal to the State Personnel Board of Review and

filed the brief with the Common Pleas Court, after which he was dismissed from the case. Adverse decisions, with respect to the appellant, followed in the Common Pleas Court and the Court of Appeals; Mr. Brown once again became counsel for the appellant following the decision in the Court of Appeals and at the same time represented the interest of the Ohio Civil Service Employees Association in appellant's case.[1] The latter organization agreed to compensate Mr. Brown for his services in the event that the appeal was lost since a contingency arrangement existed between Mr. Brown and the appellant (affidavit, #25, p. 6).

Mr. Brown was intimately acquainted with the details of the appeal to the Board since he represented the appellant; also, he was kept informed of the succeeding decisions in the case. He expressed to the appellant his surprise over the latter two decisions, and he discussed with the appellant the decision of the Court of Appeals and stated that it was in error and that the precedent case, as employed by the Court of Appeals, was inapplicable to appellant's case (affidavit, #24, p. 5). But despite the above described acquaintance with the facts and the instances in which the appellant informed Mr. Brown of his desire to proceed to the Supreme Court of the United States if necessary and of other pertinent matters as described below, Mr. Brown made no effort to bring the matter of denial of federal constitutional rights before the Supreme Court of Ohio in conjunction with the motion to certify. This failure on the part of Mr. Brown constitutes the basis of this new appeal to the courts in Ohio.

It is true that Mr. Brown did bring the matter of the contrary decisions of the Court of Appeals before the Supreme Court of Ohio in the form of a motion for rehearing; but, this was done upon the insistence of the appellant

(affidavit, #35, p. 8). But even in this instance, Mr. Brown failed to notify the Supreme Court of Ohio of the glaring factual errors contained in the appellee's "Memorandum Contra Motion for Rehearing," which might very well have been the basis for the overruling of the appellant's motion for rehearing. (See pp. 15-16 concerning this failure on the part of Mr. Brown)

The various instances of denial of federal constitutional rights are described on the succeeding pages.

DENIAL OF DUE PROCESS OF THE LAW BY THE STATE PERSONNEL BOARD OF REVIEW

As stated above, the hearing before the Board dealt almost exclusively with the question of the appellant's unclassified status. The final question at the hearing was asked by Mr. Allison with regard to the reason the appellant waited from the date of job termination on May 14, 1964 until October 9, 1964 to appeal to the Board. The appellant answered that he appealed as soon as he had learned of a right of appeal. Mr. Allison asked nothing further.

From the time of the hearing on December 1, 1964 until the Board's decision on April 9, 1965, certain events took place that have not been previously entered into the public record of the case but which are now described in the accompanying affidavit (#1-#17). The appellant contends that those events constituted the original denial of due process of law. During that period of time just described, the appellant became engaged in negotiations with the appellee, the Ohio State University, and said negotiations were initiated by the appellee (affidavit, #1, #2, #4, pp. 1-2). During that period of negotiations the chairman of the Board, Mr. James R. Gould, resigned from

his position as of February 8, 1965 (affidavit, #9, p. 3). and Mr. Earl Allison became chairman on February 18, 1965 (affidavit, #11, p. 3). The appellant meanwhile was left under the impression that the Board that had caused the University to offer to negotiate was still intact. The result of this misconception was that the appellant waited confidently for an answer to his final offer, believing all the while that he could request a final ruling in his favor from the Board that had caused the University to offer to negotiate should the negotiations become stalled. The appellants attorney, Mr. Brown, never informed the appellant of the change in the Board, although he knew very well of the misconception entertained by the appellant (affidavit, #7, p. 3 and #14, p. 4).

On March 18, 1965 the appellee filed with the Board a motion to dismiss the appellant's appeal, and it was only after that that the appellant learned of the change in the Board from a party other than Mr. Brown (affidavit, #16, p. 5). The appellant contends that this withholding of such critical information from him constituted a denial of due process of law on the part of both the old and the newly constituted Boards since the appellant had a right to be informed of the change so that he might have requested a final ruling from the Board that conducted the hearing and which had caused the University to initiate negotiations. The withholding of said information also constituted a serious error in judgment on the part of Mr. Brown.

The second instance of denial of due process of law resulted from the decision of the Board on April 9, 1965. The appellant contends that the Board's charge of unreasonable delay in bringing the appeal was a denial of due process for the following reasons: 1)the Board produced no evidence to support such a charge since it made no effort to demonstrate that the appellee would suffer damage

by the delay if the appellant should have returned to his former job; 2) the Board ignored the appellant's testimony that he had appealed as soon as he learned of his right of appeal; and 3) the Board denied the appellant an opportunity to testify in his own defense against the charge of unreasonable delay. These points were raised in the briefs and memoranda of the appellant to the Franklin County Common Pleas Court and Court of Appeals, but they were not described as denial of due process of law.

Furthermore, regarding the charge of unreasonable delay, Mr. Allison, the new chairman of the Board, was informed by a letter from the appellant and by conversation with Mr. Brown immediately following the Board's decision of the steps the appellant took in the interval prior to bringing the appeal (affidavit, #18, #19, #20, #21, p. 5). Mr. Allison replied in writing to the appellant's letter and implied that the appellant had falsified a portion of the information that the latter had presented to him (affidavit, #22, p. 5). Such an allegation was improper because 1) the Board had given the appellant no opportunity to testify and produce witnesses in defense against the charge of unreasonable delay; and 2) Mr. Allison had talked directly with Mr. Brown about the period of the delay, and it was the latter who had directed the steps taken during that period. Mr. Allison and the Board had full access to the facts about the alleged unreasonable delay but ignored them.

Regarding the alleged unreasonable delay in bringing the appeal to the Board, a detailed listing of the steps taken by the appellant in bringing that appeal was presented in the form of an affidavit to the Common Pleas Court on October 11, 1965 and is part of the Official record on file with the Supreme Court of the United States.

Upon the appellee's submission of the motion to dismiss to the Board on about March 18, 1965 (affidavit, #13, p. 4), the appellant urged Mr. Brown to present to the Board a listing of the steps taken prior to making the appeal to the Board (affidavit, #14, p. 4). Mr. Brown stated that such would not be necessary since the appellant stated at the hearing that he had appealed as soon as he learned of his right of appeal (affidavit, #15, p. 4).

DENIAL OF DUE PROCESS OF THE LAW BY THE FRANKLIN COUNTY COMMON PLEAS COURT

The appeal to the Common Pleas Court was dismissed on October 28, 1965 for reason that the appellant had been either a deputy or an assistant to a principal executive officer according to Section 143.08 (A) (9), Revised Code. Such a decision is clearly a denial of of due process since subsection (9) has absolutely no relevance to employees in educational institutions. A casual reading of Section 143.08 (A) in entirety serves to demonstrate that point. But if proof is needed, one can turn to Opinions of the Attorney General of Ohio, 1965, opinion number 65-79, page 2-164, par. 3, which states:

> Employees who work at institutions of higher education of the State of Ohio who are not specifically designated in Section 143.08 (A) (7) comprising the unclassified service. (emphasis added)

The Court could have easily noted that no mention of subsection (9) was made by either the appellee or the Board at the hearing before the latter.

A second instance of denial of due process of law by

the same court was its failure to comply with Section 2505.03, Revised Code, which provides that "every final order, judgment, or decree of a court and, when provided by law, the final order of any administrative officer, tribunal or commission may be reviewed...." Section 119.12, Revised Code, is the statute that provided for the review of a final order of the Board. The Common Pleas Court denied the appellant due process of law by completely ignoring the final order of the Board and proceeding to deal with the substantive question which had never been presented to that court in any of the briefs of either party nor at the hearing.

DENIAL OF EQUAL PROTECTION OF THE LAW AND DUE PROCESS OF THE LAW BY THE FRANKLIN COUNTY COURT OF APPEALS

The Franklin County Court of Appeals in its decision of May 3, 1966 stated that the appellant, having been carried as an unclassified employee, had no right at the outset of the case to bring before the Board a question concerning his unclassified status, based upon Section 143.012, Revised Code. The appellant contends that he was denied due process and equal protection of the law as a result.

The appellant considers the matters related immediately below to be of no immediate relevance to the future course of the case as a result of the decision of the Court of Appeals in the Crabtree case on December 13, 1966 and the subsequent decision of the Supreme Court of Ohio in the same case, as described in the motion to the Franklin County Court of Appeals requesting a review of the decisions of the lower courts (also see footnote #1 in the motion just cited). However, the appellant chooses to present the material below in order to complete the record concerning the instances of denial of federal constitutional

rights and the failure of Mr. Brown to bring such information before the Supreme Court of Ohio.

The Court of Appeals, in basing its decision upon State, ex rel. Baker v. Wichert, Mayor, 159 Ohio St. 50 (1953), chose a precedent case that was inapplicable due to containing a different type of appeal. Thus the court ignored the true precedent case, which was State, ex rel. Brand v. Eversman, 155 Ohio St. 383 (1951) that was decided by the identically same set of judges as in the Baker case. Furthermore, in making said error, the court fell into two other errors: first, it ignored a series of cases (pp. 11-12) in which the courts in Ohio upheld the right of an unclassified employee to bring before the courts a question concerning his unclassified status under the terms of the civil service law just as if he had been an employee formally carried in the classified service; and secondly, that court lifted out of context the concluding portion of the decision in the Baker case and used it to support its decision in appellant's case. That portion was out of context because the Baker case is applicable only in an instance where an employee would claim to have gained classified status by working at a job that was normally classified but had not complied with the statutory requirements for attaining such status. But the appellant appealed on a different basis, that being that he had been erroneously left in the unclassified service, and it was this feature that caused the Brand case to be the applicable precedent case.

The appellant maintains that the above error in choosing an inapplicable case as a precedent constituted a denial of due process and equal protection of the law. The latter denial results from the fact that Brand and the other appellants in the cases listed below (p. 12) received protection of the civil service law to the extent that the courts

of Ohio granted a thorough examination of the question of their unclassified status while the appellant was denied such an examination by the Board under the same civil service law.

As has been previously stated, the above matters seem no longer of immediate relevance to the future of the case but were stated for purposes of the record of instances of denial of federal constitutional rights and of the failure on the part of Mr. Brown to bring those matters before the Supreme Court of Ohio. The details of the latter problem will now be presented.

It is upon said failure of Mr. Brown to bring such matters before the Supreme Court of Ohio that the appellant bases his second appeal to the courts in Ohio while action on the petition for writ of certiorari is pending in the Supreme Court of the United States. And it is in support of that appeal to the courts in Ohio that the appellant presents the following information.

Immediately following the decision of the Court of Appeals on May 3, 1966 in the appellant's case, Mr. Brown stated that the decision was in error and that the Baker case, as employed by the court, was not a valid precedent case. Despite all of that, Mr. Brown at no point suggested presenting a motion for rehearing to the Court of Appeals. Mr. Brown, having been out of the case when it came before the Common Pleas Court and the Court of Appeals, became once again counsel for the appellant on about May 12, 1966 (affidavit, #23, #25, pp. 5-6).

Mr. Brown submitted to the Supreme Court of Ohio a memorandum in support of the motion to certify on about August 8, 1966 and that memorandum contained practically no analysis of the substance of the decision of the

Court of Appeals but dealt only with the matter of the great public importance of the decision. Such an omission prevailed despite Mr. Brown's remarks concerning the decision, as reviewed above, and despite certain other matters brought to his attention as described below.

First, the appellant clearly informed Mr. Brown on about May 25, 1966 of his desire to appeal to the Supreme Court of the United States if necessary (affidavit, #25, p. 6). Furthermore, the appellant informed Mr. Brown on about June 2, 1966 that he believed that the then pending decision of the Supreme Court of Ohio in the case of State, ex rel. Bingham v. Riley, County Eng., 6 Ohio St. 2d 263 would have relevance to the decision of the Court of Appeals in the appellant's case if the decision in the Bingham case should favor the appellants in that case. Mr. Brown rejected such a theory at the time (affidavit, #27, p. 6). The decision of the Supreme Court of Ohio in the latter case was rendered on June 15, 1966 and was favorable to the cause of the appellants; Mr. Brown made no reference to it in the appellant's memorandum in support of motion to certify. But several months later following the appeal to the Supreme Court of Ohio, Mr. Brown admitted to the appellant that said decision could be utilized in arguing the cause of the appellant in the future (affidavit, #36, p. 9).

On about June 13, 1966 the appellant wrote to Mr. Brown and described various civil service cases and their relationship to the decision in the Baker case which had been employed as a precedent case by the Court of Appeals in appellant's case (affidavit, #28, p. 7). The appellant stated to Mr. Brown that the decision in the Brand case was the true precedent case with regard to the appellant's case since both Brand and the appellant had appealed their terminations on the basis of having been erroneously left

in the unclassified service. The appellant also brought to Mr. Brown's attention the cases of State, ex rel. Trettien v. Mahon, 16 Ohio Law Abstract 33 (1934) and State, ex rel. Votaw v. Matia, 43 Ohio App. 279 (1932) which contained the same type of appeal as that of the appellant. In the Brand case and the above two cases, three different courts in Ohio received appeals from unclassified employees on the question of their unclassified status, and said appeals were based upon the civil service law as applied to classified employees. The appellant continued by stating to Mr. Brown that the action of the courts in the Brand, Trettien and Votaw cases was contrary to the decision of the Court of Appeals in appellant's case where the latter was denied the right to appeal to the Board on a question of his unclassified status under the civil service law of Ohio. Furthermore, the appellant stated to Mr. Brown that the Baker case was one of several civil service cases that were not applicable to the appellant's case since in each such case the appellant appealed on the basis of having somehow attained classified civil service status, usually by working at a job that was normally classified; but such appellants never complied with the statutory requirements for gaining such status. The courts rightly denied an appeal of that nature. Said cases are listed in a footnote on the last page. 2

But despite this examination of several civil service cases as presented to Mr. Brown and despite the latter's earlier statement that the Baker case was not applicable to the appellant's case, Mr. Brown made only a brief and illogical reference to the Baker case in appellant's memorandum in support of motion to certify to the Supreme Court of Ohio on about August 8, 1966 (p. 6). Contrary to that reference by Mr. Brown, Baker most certainly claimed that she had acquired classified civil service status and had done so by working at a job that was

normally classified. This was the only reference made by Mr. Brown to the substantive features of the decision of the Court of Appeals in the appellant's case even though he had earlier described that decision as having been in error.

The appellant brought up again with Mr. Brown the matter of going to the Supreme Court of the United States on about November 25, 1966, which was still prior to the oral hearing before the Supreme Court of Ohio (affidavit, #29, p. 7). And on about December 1, 1966, the appellant asked Mr. Brown to mention the significance of the Brand case (described above) to the appellant's case in the upcoming hearing before the Supreme Court of Ohio. Mr. Brown granted that it was a good point and agreed to mention it (affidavit, #30, p. 7). He did mention the subject at the hearing but in such a brief manner that it could hardly have been noted by the court (affidavit, #31, p. 7).

Although the following matter was not raised with Mr. Brown, he was most certainly aware of it and might well have brought it to the attention of the Supreme Court of Ohio. The appellee, the Ohio State University, filed with the Supreme Court of Ohio a memorandum opposing jurisdiction in opposition to the appellant's motion to certify, and in that memorandum the Assistant Attorney General, as attorney for the appellee, argued that the Board did not have a right to hear an appeal from an unclassified employee on the question of his unclassified status. Thus the Assistant Attorney General took a position contrary to that taken previously at the appellant's hearing before the State Personnel Board of Review; there, the right of the Board to hear the appelant's appeal on the question of his unclassified status was not disputed by the appellee.

Furthermore, on May 4, 1966, just one day after the Court of Appeals dismissed the appellant's appeal on the ground that the Board didnot have the right to hear an appeal from an unclassified employee on the question of his unclassified status, the Assistant Attorney General filed a brief of amicus curiae with the Supreme Court of Ohio in the Bingham case, cited above, in which a lengthy argument was presented in support of the right of the Board to hear an appeal from an unclassified employee on the question of his unclassified status. The appellant contends that such a shifting of position on a matter of great public importance is certainly unworthy of the Office of the Attorney General of Ohio and cannot be defended on the basis of the adversary system wherein the Assistant Attorney General was defending a client. Such contrary positions were most unusual on the part of the Assistant Attorney General and should have been brought to the attention of the Supreme Court of Ohio by Mr. Brown.

The Supreme Court of Ohio overruled the appellant's motion to certify on December 14, 1966. On about December 17, 1966 the Appellant supplied Mr. Brown with outlines for an appeal to the Supreme Court of the United States on the basis of denial of federal constitutional rights and an outline of a motion for rehearing to the Supreme Court of Ohio on the same basis (affidavit, #32, p. 7). On about December 18, 1966 the appellant learned quite by accident of the decision in the Crabtree case by the Court of Appeals, which was contrary to that same court's decision in the appellant's case (affidavit, #33, p. 8). The appellant thus began to prepare a motion for rehearing to the Supreme Court of Ohio based upon the denial of equal protection of the law (affidavit, #34, p. 8 and Statement of the Facts above).

Despite the fact that the appellant had again urged

Mr. Brown to prepare for an appeal to the Supreme Court of the United States and an appeal to the Supreme Court of Ohio for a rehearing (paragraph just above), Mr. Brown waited until noon of the deadline date for filing the motion for rehearing to mention for the first time to the appellant the matter of the Crabtree case and the recent decision in it by the Court of Appeals; Mr. Brown displayed no intention of using that decision as a basis for any future action or appeal (affidavit, #35, p. 8). The appellant immediately took the initiative and urged Mr. Brown to file a motion for rehearing with the Supreme Court of Ohio based upon denial of equal protection of the law as a result of the decision in the Crabtree case and presented him with a draft of such a motion. Mr. Brown did file said motion for rehearing that afternoon before the deadline; if he had not done so, the appellant would have filed the item which he had already prepared.

In replying to the motion for rehearing filed by Mr. Brown with the Supreme Court of Ohio, the appellee filed a memorandum contra motion for rehearing, and in this document two very serious errors were made with regard to the factual background in the Crabtree case. The erroneous statement is found on page 3 of the memorandum contra motion for rehearing as follows:

> Under date of January 12, 1950 the old Civil Service Commission pursuant to what is now Section 143.08 (A) (12), Revised Code, accomplished a transfer of the entire class of unskilled laborers including the above mentioned individuals (Crabtree et al.) from the classified service to the unclassified service. (Emphasis added.)

The above quotation is entirely erroneous.[3] The facts

of the matter are that Crabtree et al. were hired separately into the unclassified service as laborers several years after the 1950 action by the Civil Service Commission and that the laboring class in the Ohio civil service had been unclassified for years prior to 1950. The facts concerning the date of employment of Crabtree et al. and their unclassified status is recorded on their employment records in the Department of State Personnel, and the matter of the unclassified status of the laboring class in Ohio over the years as well as the unclassified status of Crabtree el al. is clearly stated by the Assistant Attorney General on pages 6, 8 and 9 of the Transcript of the hearing of the Crabtree case before the Board on March 12, 1964. The record of the Crabtree case is on file in the Franklin County Clerk of Court's Office.

In addition to making the above quoted erroneous statement, the appellee proceeded on the basis of that statement on page 3 to argue that the Crabtree case differed from the appellant's case in that Crabtree et al. had been in the classified service and never validly removed whereas the appellant had never been in the classified service. The objective was to prove that the decisions in the Knox and Crabtree cases were not contrary.[3]

The appellant's motion for rehearing was overruled by the Supreme Court of Ohio on January 11, 1967. The appellant believes that the Supreme Court of Ohio might possibly have overruled his motion for rehearing on the basis of the above factual errors and the argument based thereon.

In the face of such serious factual errors and the critical importance of the motion for rehearing to the appellant, still Mr. Brown made no effort to inform the Supreme Court of Ohio of said errors. Mr. Brown knew very well the factual background of the Crabtree case since he was

counsel for the appellants; he most certainly would have recognized such errors had he read the memorandum contra motion for rehearing submitted by the appellee. Whether Mr. Brown failed to read the memorandum or whether he read it and failed to take action really makes no difference since either failure would constitute negligence on his part.[3] Such negligence might possibly have resulted in the overruling of the appellant's motion for rehearing by the Supreme Court of Ohio.

About mid-February, 1967, Mr. Brown agreed to take the case to the Supreme Court of the United States on a contingency basis (affidavit, 36, p. 9), but he finally dropped out of the case only a few days prior to the ninety day deadline for filing the petition for writ of certiorari and did not inform the appellant of the latter's right to request a sixty day extension of the time for filing the petition (affidavit, #37, #38, p. 10).

CONCLUSION

As described above, the appellant clearly informed Mr. Brown on several occasions prior to the hearing before the Supreme Court of Ohio that he wished to appeal to the Supreme Court of the United States if necessary, but Mr. Brown made no effort to support the objective of the appellant by presenting the instances of denial of federal constitutional rights to that court in the memorandum in support of the motion to certify or at the hearing. Since Mr. Brown is a very capable and experienced attorney, such a failure cannot be excused as being an oversight; such a failure can only be described as a conscious error in judgment. The appellant contends that Mr. Brown substituted his attitude concerning the future of the case for that of the appellant. In such an instance of conflict of attitudes, Mr. Brown should have retired immediately

from the case rather than give only partial support to the appellant.

As a result of this failure on the part of Mr. Brown, the appellant contends that he has a right in terms of the basic principles of justice to appeal for a second time to the courts of Ohio in order to present the material contained under this cover.

Respectfully submitted,

Donald F. Knox
Appellant

FOOTNOTES

[1]The signatures of attorneys Robert T. Forman and John A. Brown appear on the memorandum in support of motion to certify to the Supreme Court of Ohio, but Mr. Brown was in complete charge of the case in that appeal (ref. p. 3).

[2]Jones v. City of Struthers, 19 Ohio Law Abstracts 155 (1935); State, ex rel. Lynch v. Taylor, Dir., 136 Ohio St. 417 (1940); State, ex rel. Stein v. Dept. of Highways, 136 Ohio St. 252 (1940); Taylor v. Johnson, Mayor, 172 Ohio St. 394 (1961) (ref. p. 12).

[3]Perhaps the Assistant Attorney General spoke of the "classified service" in a manner at variance with generally accepted usage (see "Motion that the Court Receive an Examination of the Identical Aspects of the

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Instances of Denial of Federal Constitutional Rights..." was mailed to Robert M. Zitko, Assistant Attorney General, State House Annex, Columbus, Ohio on the_____day of September, 1967.

_____
Donald F. Knox
Appellant

I certify that a copy of the foregoing "Instances of Denial of Federal Constitutional Rights..." was mailed to John A. Brown, Attorney at Law, 42 East Gay Street, Columbus, Ohio on the_____day of September, 1967

_____
Donald F. Knox
Appellant

3 (continued) Knox and Crabtree cases). Nevertheless, he still would have been in serious error, and Mr. Brown still would have been negligent. (ref. pp. 15-17).